

**Public Bank Bhd v Abdul Rashid bin Abd Majid**

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COURT OF APPEAL (PUTRAJAYA) — APPEAL NO W-04-300 OF 2010  
SURIYADI, LOW HOP BING AND JEFFREY TAN JJCA  
8 MARCH 2012

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*Contract — Void contract — Restitution — Hirer defaulted under hire-purchase agreement and sold car to third party — Owner unable to repossess vehicle sued for debt under agreement — Sessions court dismissed claim holding agreement ab initio void for owner's breach of Hire-Purchase Act 1967 — Sessions court and High Court on appeal failed to make consequential order against hirer under s 66 of the Contracts Act 1950 — Whether both courts erred — Whether hirer should have been ordered to return vehicle to owner or make compensation for it*

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The appellant had sued the respondent in the sessions court for monies owing under a hire-purchase agreement for a car. Under the agreement, the respondent had paid the RM73,000 cash price for the vehicle, RM13,186.20 as deposit and RM6,200 in instalments before he defaulted. The appellant was unable to repossess the vehicle as the respondent had sold it to a third party. The sessions court dismissed the claim holding the hire-purchase agreement was void ab initio as the appellant failed to prove the existence of the Summary of Financial Obligations under the agreement as required by s 4(1) of the Hire-Purchase Act 1967. The High Court upheld the sessions court's decision on appeal. The appellant appealed to the Court of Appeal contending that both the courts below were wrong in failing to make a consequential order under s 66 of the Contracts Act 1950 ('s 66') for the parties to be restored to their original position before the hire-purchase agreement was entered into.

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**Held**, allowing the appeal with costs and ordering the respondent to compensate the appellant in the sum of RM53,613.80 with interest till date of settlement:

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- (1) Section 66 imposed an obligation on the part of the respondent, who had received pecuniary advantage under the hire-purchase facility, to either restore the vehicle or make compensation for it to the appellant. The High Court and sessions court erred in failing to make a consequential order under s 66 (see paras 10–11).
- (2) The courts below should have ordered the respondent to either return the vehicle to the appellant or, since the return was an impossibility because the vehicle had been sold to a third party, ordered him to compensate the

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- A        appellant in the sum of RM53,613.80 being the balance after deducting the deposit and instalments paid from the cash price under the agreement (see para 10).

**[Bahasa Malaysia summary]**

- B        Perayu telah menyaman responden di mahkamah sesyen untuk wang yang terhutang di bawah perjanjian jual beli untuk kereta. Di bawah perjanjian tersebut, responden telah membayar harga tunai sejumlah RM73,000 untuk kenderaan tersebut, RM13,186.20 sebagai deposit dan RM6,200 secara ansuran sebelum dia mengingkari. Perayu tidak dapat menarik balik kenderaan tersebut kerana responden telah menjualnya kepada pihak ketiga. Mahkamah sesyen menolak tuntutan dengan memutuskan perjanjian sewa beli tersebut terbatal ab initio memandangkan perayu gagal untuk membuktikan kewujudan Ringkasan Tanggungjawab Kewangan di bawah perjanjian tersebut seperti yang dikehendaki oleh s 4(1) Akta Sewa Beli 1967. Mahkamah Tinggi mengesahkan keputusan mahkamah sesyen atas rayuan. Perayu merayu kepada Mahkamah Rayuan berhujah bahawa kedua-dua mahkamah bawahan salah kerana gagal untuk membuat perintah berikutnya di bawah s 66 Akta Kontrak 1950 ('s 66') untuk pihak-pihak dikembalikan kepada kedudukan asal sebelum perjanjian sewa beli tersebut dimasuki.

- E        **Diputuskan**, membenarkan rayuan dengan kos dan memerintahkan responden membayar perayu dalam jumlah sebanyak RM53,613.80 dengan faedah sehingga tarikh penyelesaian:

- F        (1) Seksyen 66 mengenakan tanggungjawab ke atas responden, yang menerima kelebihan kewangan di bawah kemudahan sewa beli tersebut, untuk sama ada mengembalikan kenderaan tersebut atau membuat pembayaran untuknya kepada perayu. Mahkamah Tinggi dan mahkamah sesyen silap kerana gagal untuk membuat perintah berikutnya di bawah s 66 (lihat perenggan 10–11).
- G        (2) Mahkamah-mahkamah bawahan patut memerintah responden untuk sama ada mengembalikan kenderaan tersebut kepada perayu atau, memandangkan pemulangan adalah mustahil kerana kenderaan tersebut dijual kepada pihak ketiga, memerintahkan dia untuk membayar perayu sejumlah RM53,613.80 sebagai baki selepas menolak deposit dan bayaran ansuran yang dibayar daripada harga tunai di bawah perjanjian tersebut (lihat perenggan 10).]
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**Notes**

For cases on restitution, see 3(3) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 6491–6492.

**Cases referred to**

*Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393; [1998] 2 CLJ 75, FC (refd)

*BBMB Kewangan Berhad v Tan Swee Heng & Anor* [2002] MLJU 330; [2002] 7 CLJ 377, HC (refd)

*Chin Kit Yee & Anor v Yeng Chong Realty Bhd* [2006] MLJU 424; [2006] 4 CLJ 432, HC (refd)

*Public Finance Bhd v Ehwon bin Saring* [1996] 1 MLJ 331; [1996] 1 CLJ 628, HC (refd)

*Sik Hong Photo Sdn Bhd v Ch'ng Beng Choo (suing for and on behalf of Ng Hua's Estate, Deceased)* [2010] 3 MLJ 633; [2010] 5 CLJ 427, CA (refd)

*Yeep Mooi v Chu Chin Chua & Ors* [1981] 1 MLJ 14, FC (refd)

**Legislation referred to**

Contracts Act 1950 s 66

Hire Purchase Act 1967 s 4(1)

**Appeal from:** Civil Appeal No R3–128–81 of 2009 (High Court, Kuala Lumpur).

*TJ Lee (HC Yong With Him) (Zairina Loh & Wong) for the appellant.*  
*Haniff Khatri (Zainul Rijal Talha & Amir) for the respondent.*

**Low Hop Bing JCA (delivering judgment of the court):****APPEAL**

[1] The learned sessions court judge had dismissed the plaintiff's claim. That decision was affirmed by the learned judicial commissioner ('the JC'). This is the appellant's ('the plaintiff's') appeal against the decision of the JC.

**FACTUAL BACKGROUND**

[2] The plaintiff sought to recover RM59,794.06 and interest from the respondent ('the defendant') based on the defendant's default under a hire purchase agreement ('the HP agreement').

[3] The trial in the sessions court revealed that the plaintiff and the defendant had entered into the HP agreement for the finance of a motor vehicle ie Kia Carnival bearing registration No WHJ 7077 ('the vehicle') at RM73,000. The defendant paid a deposit of RM13,186.20 and also instalments amounting to RM6,200.

[4] The sessions court held that the HP agreement was void ab initio as the

A plaintiff had failed to prove the existence of the summary of financial obligations under the HP agreement, being in breach of s 4(1) of the Hire-Purchase Act 1967.

B [5] The defendant had sold the vehicle to a third party, and so the plaintiff was unable to repossess it.

SECTION 66 OF THE CONTRACTS ACT 1950 ('S 66')

C [6] The plaintiff's complaint was that the sessions court and the High Court fell into errors of law and/or fact in failing to make a consequential order under s 66 to restore the parties to the original position before the HP agreement was entered into.

D [7] Section 66 merits reproduction as follows:

66 Obligation of person who has received advantage under void agreement, or contract that becomes void

E When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

F [8] Section 66 provides for a discretionary remedy in the nature of restitution which the court may grant in line with the ambit of the section and within the principles of the law of contract: *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393; [1998] 2 CLJ 75, at p 95 per Mohd Azmi FCJ (as he then was). His Lordship stressed that under that section, the party who is bound to restore any advantage received or to make compensation for such advantage is the person who is a party to the agreement and has received any advantage pursuant to the terms or conditions of the invalid contract.

H [9] Other judicial illustrations which illuminate the remedy of restitution conferred by s 66 include:

(a) *Yeep Mooi v Chu Chin Chua & Ors* [1981] 1 MLJ 14, 17 D–E per Salleh Abas FJ (later LP);

I (b) *Public Finance Bhd v Ehwan Bin Saring* [1996] 1 MLJ 331; [1996] 1 CLJ 628, 629 held [2] per Mohd Ghazali Mohd Yusoff J (later FCJ);

(c) *BBMB Kewangan Berhad v Tan Swee Heng & Anor* [2002] MLJU 330; [2002] 7 CLJ 377, 390h–391b (HC) per Ramly Ali J (now JCA); and

(d) my judgments in:

- (i) *Chin Kit Yee & Anor v Yeng Chong Realty Bhd* [2006] MLJU 424; [2006] 4 CLJ 432 [37], 441 and 442 (HC); and
- (ii) *Sik Hong Photo Sdn Bhd v Ch'ng Beng Choo (suing for and on behalf of Ng Hua's Estate, Deceased)* [2010] 3 MLJ 633; [2010] 5 CLJ 427, 442 [32] and [33] (CA).

[10] With particular reference to the above factual background, we are of the view that s 66 imposed an obligation on the part of the defendant who had received the pecuniary advantage of the hire purchase facility either to restore the vehicle, or to make compensation for it, to the plaintiff. In this appeal, the High Court and the sessions court had failed to do so. We are of the view that they should have made a consequential order under s 66 as follows:

- (a) to order the defendant to return the vehicle to the plaintiff; or
- (b) since the return of the vehicle is now an impossibility because the defendant has sold the vehicle to a third party, to order the defendant to make monetary compensation to the plaintiff, in the sum of RM53,613.80 calculated as follows:

|                       |           |
|-----------------------|-----------|
| Cash price            | RM73,000  |
| Less deposit          | 13,186.20 |
| Less instalments paid | 6,200     |
|                       | 53,613.80 |

#### CONCLUSION

[11] On the foregoing grounds, we hold that the learned judicial commissioner and the learned sessions court judge erred in failing to make a consequential order under s 66. We therefore allow this appeal. Pursuant to s 66, we make a consequential order directing the defendant to make monetary compensation to the plaintiff in the sum of RM53,613.80 as computed above, with interest from 13 January 2009 (the date on which the sessions court ought to have made the order) to the date of realisation. Costs of RM10,000 to the appellant here and below.

A [12] Deposit to be refunded to the appellant (the plaintiff).

*Appeal allowed with costs and respondent ordered to compensate appellant in the sum of RM53,613.80 with interest till date of settlement.*

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Reported by Ashok Kumar

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